IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 12196 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE D.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

JAGDISH TRIKAMDAS KHATWANI

Versus

CHIEF OFFICER/ADMINISTRATOR

Appearance:

1. Special Civil Application No. 12196 of 2001

Mr.Asim Pandya for

HL PATEL ADVOCATES for Petitioners No. 1-69

MR DA BAMBHANIA for Respondent No. 1

Mr.K.P.Raval, learned AGP for Respondents No. 2-3

CORAM : MR.JUSTICE D.K.TRIVEDI

Date of decision: 27/02/2002

ORAL JUDGEMENT

1. Rule. Mr. Bambhania waives service of rule on behalf of respondent No.1. Mr. K.P.Raval, learned AGP,

waives service of rule on behalf of respondents Nos.2 and 3. By consent rule is fixed forthwith.

2. This petition is pending since issuance of notice as per order dated 24.12.2001. The petitioners have challenged the action initiated by the respondent authority by issuing notice to evict the place occupied by the petitioners, as according to the respondent authority, they are encroachers. While filing this petition, it is the case of the petitioners that the notice in question is issued without application of mind and the same is illegal, as according to the petitioners, place occupied by them is allotted by the Chief Officer of Talod Nagarpalika under Resolution and even after allotment of land,the Municipal authority is charging rent and even the authority under the Shops and Establishments Act has also granted licence in respect of running of their business in the place allotted to them. The petitioners have also annexed various receipts issued by the Talod Nagarpalika to show that they have paid the rent and some of the documents clearly show that even the respondent - Talod Nagarpalika (Borough) had accepted the rent upto the period of March 2002. Documents produced by the petitioners also show that even the Chief Officer, Talod Nagarpalika had also granted permission for transfer of the place, namely, cabins occupied by them by charging fees. In short, it is the case of the petitioners that they are not encroachers and they are occupying the place allotted under the Resolution passed by the Nagarpalika. In short, as per the notice issued by the Chief Officer, Talod Nagarpalika dated 16.12.2001, which is a printed notice, the petitioners were informed that they are occupying the place unauthorisedly and they have encroached upon the said place, which is situated in the Bazar road by placing cabins/larry gallas and the petitioners were asked to remove the said encroachment by granting 24 hour time, failing which such encroachment will be cleared by the authority at the cost of the petitioners.

3. Affidavit in reply is filed by Shri I.S.Patel, Chief Officer of respondent No.1 - Talod Nagarpalika in detail dated 28.12.2001 annexing certain documents, wherein it is the case of the Municipality that the Resolution passed earlier by the Talod Municipality was set aside by the Collector while exercising power under Section 258 of the Gujarat Municipalities Act and once the Resolution is set aside, whatever allotments were made under the Resolution passed by the Municipality, they stand cancelled.

4. The question which this court is required to consider is in respect of the challenge to the notice issued by the Chief Officer dated 16.12.2001 to each petitioner. Reading the notice, prima facie, one can say that the authority has, while issuing notice, considered that the petitioners had occupied place by placing their cabin /larry gallas unauthorisedly and the same is encroached upon by the petitioners. It is, therefore, clear that the authority at the time of issuing notice, has considered that the petitioners have unauthorisedly occupied the place by keeping their cabin/larry gallas and accordingly the notice was given, under which they were asked to remove the said encroachment by granting 24 hours time. Previously, the time was given for removing the encroachment was 2 days. However, it was erased and corrected by placing 24 hours time. Prima facie reading the notice, one can presume that the petitioners are encroachers and accordingly the authority has issued notice. But as seen from the case put forward by the petitioners by producing documents, it establishes that places were allotted under Resolution passed by the Nagarpalika and even as per the Resolution, the petitioners are paying rent to the Nagarpalika. It is clearly born out from the documents attached to the petition that even Nagarpalika has accepted rent upto March 2002. Keeping this in mind, prima facie this court is of the view that the notice in question is absolutely without application of mind.

5. However, according to Mr. Bambhania for respondent No.1, in view of the order passed by the Collector in exercise of power under Section 258 of the Gujarat Municipalities Act, the Collector has set aside the Resolution passed by the Nagarpalika in respect of allotment of land and once the Resolution is set aside by the Collector, the lower body is required to implement the said order and accordingly in execution of the said order passed by the Collector, the impugned notice is issued. Accordingly a notice was issued wherein the petitioners were directed to remove the encroachment. Mr. Bambhania has also placed reliance upon the public notice issued as back as on 31.7.98 under the signature of Chief Officer, Talod Municipal Borough wherein the unauthorised persons occupying the lands were asked to remove their encroachments by removing the larry galls and cabins. Accordingly it is the stand of the respondent - authority that as back as in 1998 public notice was given and inspite of that, the petitioners have not removed their cabins by clearing the encroachment. As found from the affidavit of respondent - authority, that a Civil Suit was also filed wherein the

Talod Municipality was directed not to give any place on a public road and as per the order passed by the trial court as well as by the appellate court, the Municipality has been restrained and accordingly the Municipality is required to clear the encroachment.

6. On examining the contentions raised before me in the present case and as found from the notice and the contentions raised in the petition, that the public notice issued earlier is not applicable to the facts of the present case as it is given to a person who has encroached upon the land, while in the present case, it is the case of the petitioners that they have been allotted the land by the Nagarpalika under Resolution. It is true that so far as the public notice issued in the year 1998 is concerned, it cannot apply to the petitioners because according to the petitioners, they have been on the land as per allotment made by the Municipality and further that the Municipality has also received rent from the petitioners and in some cases, the Municipality has received rent upto March 2002. Therefore, so far as notice under challenge is concerned, surely it can be said that the notice is given without any application of mind and same is illegal. However, once the notice is declared illegal, surely the respondent authority is not entitled to enforce the said notice. But at the same time, if the Municipality is required to take steps in response to the order or direction of the higher authority or as per the direction of the Court, the Municipality is entitled to examine the case individually and give notice by following due process of law, wherein the petitioners can place their case by producing documents.

7. Accordingly while setting aside the notice Annexure "A" collectively dated 16.12.2001, it will be clear that the respondent - authority is not entitled to enforce the notice under challenge issued by the Chief Officer, Talod Municipal Borough dated 16.12.2001. However, it will be open for the respondent - authority to take steps to clear the encroachments as per the direction of the appellate authority as well as of the court in accordance with law by following due process of law.

8. Accordingly the petition is allowed. Rule is made absolute. The respondent - authority will not execute and implement the notices under challenge. Direct service is permitted.

(D.K.Trivedi,J)

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